CITATIONS

Cases:	Page
Baumgartner v. *United States*, 322 U. S. 665	3, 4
Bronson v. *Schulten*, 104 U. S. 410	4
Gherwal v. *United States*, 46 F. 2d 998	5
Hazel-Atlas Co. v. *Hartford Co.*, 322 U. S. 238	5
National Park Bank, Ex parte, 256 U. S. 131	4
Phillips v. *Negley*, 117 U. S. 665	6
Realty Co. v. *Montgomery*, 284 U. S. 547	4
Scotten v. *Littlefield*, 235 U. S. 407	5, 6
United States v. *Mayer*, 235 U. S. 55	4, 6
United States v. *Schneiderman*, 320 U. S. 118	3
Zegura v. *United States*, 104 F. 2d 34, certiorari denied, 308 U. S. 586	5
Miscellaneous:	
Rules of the Circuit Court of Appeals for the Seventh Circuit, Rule 2	5

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 702

ALBERT W. KRAUSE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On September 17, 1942, after a trial before the court in which petitioner was present and represented by counsel of his own choice (R. 21–167), the United States District Court for the Northern District of Illinois entered a decree canceling the certificate of naturalization issued to petitioner in the same court on October 2, 1929, on the ground of fraud in his oath of allegiance in that he did not intend to renounce all allegiance to the German Reich or bear true faith and allegiance to the United States (R. 183–185). Motions for a new trial and for arrest of judgment were denied (R. 168). A later motion to vacate the denatural-

ization decree (R. 186–188) and a motion for the appointment of a guardian *ad litem* for petitioner's minor son, for issuance of subpoenas duces tecum to the heads of the State Department, the Selective Service System of Tulsa, Oklahoma, and the Federal Bureau of Investigation, and for issuance of a writ of habeas corpus *ad testificandum* for petitioner (R. 197–198), were also denied (R. 218–219, 252–253), as was leave to file an amended motion to vacate (R. 229–252), after full hearings before the trial judge (R. 207–218, 219–228). On appeal to the Circuit Court of Appeals for the Seventh Circuit from the denaturalization decree and the denial of the motion to vacate that decree, as well as from the denial of leave to file an amended motion to vacate and from the order denying the motion for appointment of a guardian *ad litem,* etc., the judgment and orders of the district court were affirmed on June 30, 1943 (R. 288–297; 136 F. 2d 935), and the mandate of the Circuit Court of Appeals issued on July 21, 1943 (R. 297).

On September 19, 1945, petitioner filed in the original proceeding in the circuit court of appeals a motion (R. 298) and a petition of his attorney, as his representative (R. 299–303), "to set aside the decree of denaturalization" entered against him, to enter a rule upon the United States Attorney to answer within a time fixed by the court, to have the cause set for a hearing be-

fore the district court, and to release petitioner on bail[1] pending such hearing. Leave to file this motion was granted (R. 303–304), and the United States Attorney responded by moving to deny the motion and dismiss the petition (R. 304–308). On October 1, 1945, the circuit court of appeals, without an opinion, denied the motion and petition (R. 311).

We believe that the court below was correct in denying petitioner's motion. The sole basis of the motion appears to be that the judgment of the circuit court of appeals was contrary to certain of the pronouncements made by this Court in *Schneiderman* v. *United States,* 320 U. S. 118, and that the said judgment was subsequently overruled by this Court in the case of *Baumgartner* v. *United States,* 322 U. S. 665 (R. 298).[2] Peti-

[1] Petitioner was at the time confined at Crystal City, Texas, as an enemy alien (R. 299, 302).

[2] The only supporting statement in petitioner's motion is "* * * that the opinion written by the United States Circuit Court of Appeals in his case, 136 Fed. 2d 935, is contrary to the law in the case of U. S. v. Schneiderman, 66 U. S. Supreme Reports as to paragraphs 4, 5, 6, 7, and 8, and has been overruled by the United States Supreme Court in the case of U. S. v. Baumgardner." The only new matter asserted was contained in paragraph 8 of the petition accompanying the motion in the circuit court of appeals, in which petitioner's attorney asserted: "That since the surrender of Germany on May 8th, 1945, your petitioner has had placed at his disposal certain photostatic copies of documents in reference to the passports issued to the said Albert W. Krause which will be presented to the Court on

tioner, therefore, sought reconsideration of the decision of the circuit court of appeals merely in the light of the principles later established by this Court in the *Baumgartner* case. However, the term at which the judgment of the circuit court of appeals was entered in petitioner's case had long since expired [3] when petitioner filed his motion. The motion, therefore, came too late. It is a settled rule that federal trial and appellate courts have no power after term to reexamine or alter their judgments for claimed errors of law. See *Hazel-Atlas Co.* v. *Hartford Co.,* 322 U. S. 238, 244; *Realty Co.* v. *Montgomery,* 284 U. S. 547, 551–552; *Ex parte National Park Bank,* 256 U. S. 131, 133; *United States* v. *Mayer,* 235 U. S. 55, 68–69; *Bronson* v. *Schulten,* 104 U. S. 410, 415.

If petitioner's motion be considered as a bill of review or an application for leave to file a bill

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the hearing of this matter" (R. 302). But there is no showing that this evidence is in any way material, or that it is different from the exhibits (copies of correspondence between the State Department and petitioner's employer regarding passports for the latter, R. 232–252) attached to the amended motion to vacate the decree of denaturalization (R. 229) which petitioner submitted to the trial court in December 1942 and which that court denied him leave to file (R. 252–253).

[3] Rule 2 of the circuit court of appeals provides that one term shall be held annually commencing on the first Tuesday in October and continuing until the first Tuesday of the next October.

of review in the district court (see *Hazel-Atlas Co.* v. *Hartford Co., supra,* at 244–245, 248–249), he stands in no better position. A bill of review is not sustainable after term to set aside a decree canceling a certificate of naturalization, since such a proceeding is not a part of the cause in which the original decree was rendered, but is a new and independent proceeding requiring process, and consequently cannot be brought against the United States without its consent. *Zegura* v. *United States,* 104 F. 2d 34, 35–36 (C. C. A. 5), certiorari denied, 308 U. S. 586; *Gherwal* v. *United States,* 46 F. 2d 998 (C. C. A. 9). But apart from this obstacle, petitioner's application lacks the requisites of a bill of review, for "Bills of review are on two grounds; first, error of law apparent on the face of the record without further examination of matters of fact; second, new facts discovered since the decree, which should materially affect the decree and probably induce a different result." *Scotten* v. *Littlefield,* 235 U. S. 407, 411. And a subsequent, more authoritative interpretation of the law—the only ground relied upon by petitioner—even if its application would require a different result, "will not lay the foundation for a bill of review for errors of law apparent, or for new matter *in pais* discovered since the decree and probably

requiring a different result." *Scotten* v. *Littlefield, supra.*[*]

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

J. HOWARD MCGRATH,
Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
ANDREW F. OEHMANN,
Attorneys.

FEBRUARY 1946.

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[*] Assuming that the federal courts possess a correctional jurisdiction analogous to that exercised at common law on writ of error *coram nobis* (cf. *United States* v. *Mayer*, 235 U. S. 55), petitioner has not made out a case for relief, since his motion did not rest upon an asserted error of fact not put in issue but material to the validity of the original proceeding itself, the only basis for relief under such writ. As this Court said in *Phillips* v. *Negley*, 117 U. S. 665, 673, the common law writ of error *coram nobis* was the means "by which errors of fact might be corrected, limited generally to the facts that one of the parties to the judgment had died before it was rendered, or was an infant and no guardian had appeared or been appointed, or was a *feme covert*, and the like, or error in the process through the fault of the clerk; for which writ * * * in practice, a motion is now substituted, heard in a summary manner upon affidavits."

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